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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DAYNA PADULA, et al.,  
12 Plaintiffs,

No. 2:05-cv-00411-MCE-EFB

13 v.

MEMORANDUM AND ORDER

14 ROBERT MORRIS, et al.,  
15 Defendants.  
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18 Presently before the Court is Dayna Padula's Motion for  
19 Reconsideration of the Court's September 23, 2008, Order granting  
20 Defendants' Motion for Judgment on the Pleadings as to  
21 Plaintiff's Second and Third Causes of Action. In that prior  
22 Order, faced with a circuit split in which the Ninth Circuit had  
23 not yet weighed in, the Court determined Plaintiff's second and  
24 third claims, brought pursuant to 42 U.S.C. § 1983, were  
25 preempted by Title IX, 20 U.S.C. § 1681.

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1 Since then, in Fitzgerald v. Barnstable School Committee, ---  
2 U.S. ----, 129 S. Ct. 788 (2009), the Supreme Court resolved that  
3 split, reaching the opposite conclusion. In light of that  
4 intervening decision, Plaintiff's instant Motion is granted.<sup>1</sup>

## 6 BACKGROUND

8 Plaintiff was a student at Dunsmuir High School from  
9 September 2002 through June 2004. She alleges that, during her  
10 time at Dunsmuir, she was subjected to gender-based harassment  
11 and discrimination. According to Plaintiff, Defendant Robert  
12 Morris, the principal of Dunsmuir High, Defendant Ray Kellar, the  
13 vice-principal and a teacher at the school, and other unnamed  
14 school employees committed the harassing acts.

15 Plaintiff filed her First Amended Complaint ("FAC") on  
16 June 28, 2005, alleging causes of action under, *inter alia*,  
17 42 U.S.C. § 1983. Plaintiff specifically brought her § 1983  
18 claims against all Defendants other than the Dunsmuir Unified High  
19 School District ("District"). The Court subsequently granted  
20 Defendants' Motion for Judgment on the Pleadings as to those  
21 causes of action, concluding they were preempted by Title IX.

22 On December 18, 2009, Plaintiff's newly retained counsel  
23 filed a Pretrial Statement on her behalf, requesting that the  
24 Pretrial Scheduling Order be amended and the case stayed pending  
25 the Supreme Court decision in Fitzgerald.

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27 <sup>1</sup> Because oral argument will not be of material assistance,  
28 the Court ordered this matter submitted on the briefing. E.D.  
Cal. Local Rule 78-230(h).

1 Accordingly, the Court suspended all activity in this case and,  
2 upon issuance of the awaited decision, Plaintiff timely filed the  
3 instant Motion for Reconsideration.

#### 4 5 STANDARD

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7 A court should be loathe to revisit its own decisions unless  
8 extraordinary circumstances show that its prior decision was  
9 clearly erroneous. Christianson v. Colt Indus. Operating Corp.,  
10 486 U.S. 800, 817 (1988). This principle is generally embodied  
11 in the law of the case doctrine. That doctrine counsels against  
12 reopening questions once resolved in ongoing litigation. Pyramid  
13 Lake Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 369 n.5  
14 (9th Cir. 1989). Nonetheless, under certain limited  
15 circumstances, the court has discretion to reconsider its prior  
16 decisions.

17 A motion for reconsideration is treated as a Rule 59(e)  
18 motion if filed within ten days of entry of judgment, but as a  
19 Rule 60(b) motion if filed more than ten days after judgment.  
20 See Am. Ironworks & Erectors Inc. v. N. Am. Constr. Corp.,  
21 248 F.3d 892, 898-99 (9th Cir. 2001). Since this motion is  
22 seeking reconsideration of a final judgement and was filed more  
23 than ten days after the entry of judgement, the Court will treat  
24 it as a Rule 60(b) motion. Motions for relief from judgment  
25 pursuant to Rule 60(b) are addressed to the sound discretion of  
26 the district court. Casey v. Albertson's Inc., 362 F.3d 1254,  
27 1257 (9th Cir. 2004).

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1 Rule 60(b) enumerates the grounds upon which a motion for  
2 relief from an order or judgment may be made. It specifies that:

3 On motion and just terms, the court may relieve a party  
4 or its legal representative from a final judgment,  
5 order, or proceeding for the following reasons: (1)  
6 mistake, inadvertence, surprise or excusable neglect;  
7 (2) newly discovered evidence that, with reasonable  
8 diligence, could not have been discovered in time to  
9 move for a new trial under 59(b); (3) fraud (whether  
10 previously called intrinsic or extrinsic),  
11 misrepresentation, or misconduct by an opposing party;  
12 (4) the judgment is void; (5) the judgment has been  
13 satisfied, released or discharged; it is based on an  
14 earlier judgment that has been reversed or vacated; or  
15 applying it prospectively is no longer equitable; or  
16 (6) any other reason that justifies relief.

17 Fed. R. Civ. Proc. 60(b). Mere dissatisfaction with the court's  
18 order, or belief that the court is wrong in its decision, are not  
19 grounds for relief under Rule 60(b).

## 20 ANALYSIS

21 Plaintiff seeks reconsideration of the dismissal of her  
22 § 1983 claims. In light of the Supreme Court's Fitzgerald  
23 opinion, Defendants do not oppose reconsideration of this Court's  
24 prior decision. See Fitzgerald, 129 S. Ct. at 797 (holding "that  
25 § 1983 suits based on the Equal Protection Clause remain  
26 available to plaintiffs alleging unconstitutional gender  
27 discrimination in schools" and concluding that "Title IX was not  
28 meant to be an exclusive mechanism for addressing gender  
discrimination in schools, or a substitute for § 1983 suits as a  
means of enforcing constitutional rights").

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1 Accordingly, Plaintiff's Motion for Reconsideration is granted,  
2 and Defendants' Motion for Judgment on the Pleadings as to  
3 Plaintiff's Second and Third Causes of Action, those arising  
4 under 42 U.S.C. § 1983, is retroactively denied.

5 Nevertheless, the parties do seek to clarify a number of  
6 procedural or technical issues. As a threshold matter,  
7 Defendants seek clarification as to which parties are bringing  
8 and defending these reinstated claims, and they request  
9 additional time to file dispositive motions. Plaintiff, on the  
10 other hand, asks the Court to reopen discovery so she can take  
11 further depositions regarding her § 1983 claims. The Court will  
12 address each argument in turn.

13 First, Defendants express confusion as to which Plaintiffs  
14 are included in this Motion. However, in her Reply brief,  
15 Plaintiff makes clear that she is the only Plaintiff bringing the  
16 current Motion. Thus, she is still the only Plaintiff  
17 prosecuting this action.

18 Defendants next question which Defendants remain a party to  
19 Plaintiff's § 1983 claims. Plaintiff's FAC clearly stated that  
20 her Second and Third Causes of Action were alleged against all  
21 Defendants other than the School District. The Court's current  
22 denial of Defendants' original Motion for Judgment on the  
23 Pleadings reinstates the claims as articulated in the FAC.  
24 Accordingly, the Court rejects both parties' arguments to the  
25 contrary, and holds that Plaintiff currently maintains § 1983  
26 claims against all Defendants, with the exception of the  
27 District.

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1 The Court is similarly unpersuaded by Defendants' claim  
2 that, for a variety of reasons, and though the time for such  
3 filing had come and gone prior to the Court issuing its September  
4 Order, they should be permitted to file additional dispositive  
5 motions to facilitate dismissal of various Defendants.  
6 Defendants would not have been able to further attack the  
7 pleadings when the original Order was issued, nor will the Court  
8 allow Defendants the opportunity to do so now. Accordingly, no  
9 further dispositive motions will be allowed, and no Defendants  
10 will be dismissed or added at this time.

11 Finally, the Court also denies Plaintiff's invitation to  
12 reopen discovery as to her § 1983 claims. The applicable  
13 discovery cutoff was December 21, 2007, several months prior to  
14 the filing of the underlying Motion for Judgment on the  
15 Pleadings. Thus, similarly to Defendants' above request, the  
16 time to have conducted the necessary discovery had already passed  
17 before Defendants filed their original Motion. Plaintiff  
18 nevertheless argues that, because her former attorney was in the  
19 process of attempting to withdraw when he opposed the underlying  
20 Motion and took the relevant depositions, he was not properly  
21 focused on prosecuting this action. Regardless, the fact remains  
22 that Plaintiff was represented by counsel throughout both  
23 discovery and the defense of the Motion for Judgment on the  
24 Pleadings. Therefore, there is no good which warrants the  
25 reopening of discovery as to these claims.

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1 **CONCLUSION**

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3 Accordingly, Plaintiff's Motion for Reconsideration is

4 GRANTED, and Defendants' Original Motion for Judgment on the

5 Pleadings as to Plaintiff's Second and Third Causes of Action is

6 now DENIED. Defendants' request for additional time in which to

7 file dispositive motions and Plaintiff's request to reopen

8 discovery are both DENIED. Not later than twenty (20) calendar

9 days after this Order is filed electronically, the parties shall

10 file a Joint Status Report with the Court.

11 IT IS SO ORDERED.

12 Dated: March 17, 2009

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15 MORRISON C. ENGLAND, JR.  
16 UNITED STATES DISTRICT JUDGE  
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